

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:PSI:B01  
PLR-114925-21

Date:  
January 14, 2022

LEGEND

X =

Sub =

Date 1 =

Date 2 =

Date 3 =

State =

Dear \_\_\_\_\_ :

This letter responds to a letter dated May 10, 2021, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code ("Code").

FACTS

According to the information submitted, Sub was organized under the laws of State on Date 1, and made an election to be an S corporation effective Date 1. X was organized under the laws of State on Date 2 and made an election to be an S corporation effective Date 2. On Date 2, as part of what X represents was a

reorganization under § 368(a)(1)(F), Sub's shareholders contributed all their stock in Sub to X, thereby causing Sub to become a wholly owned subsidiary of X. Sub then converted to a limited liability company under State law on Date 3, and by default was treated as a disregarded entity for federal tax purposes. Afterwards, X made an election to treat Sub as a qualified subchapter S subsidiary ("QSub") effective Date 2. However, X discovered that its election to treat Sub as a QSub was ineffective due to Sub's failure to meet all the requirements of § 1361(b)(3)(B) at the time the election was made.

X represents that the ineffective QSub election for Sub was inadvertent and not the result of tax avoidance or retroactive tax planning. X further represents that no federal tax return of any person has been filed inconsistent with a valid QSub election having been made for Sub effective Date 2. Sub and X have agreed to make any adjustments required by the Service consistent with the treatment of Sub as a QSub.

### LAW AND ANALYSIS

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of the Code (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) provides that the term "QSub" means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

Section 1.1361-3(a)(1) of the Income Tax Regulations provides that the corporation for which a QSub election is made must meet all the requirements of § 1361(b)(3)(B) at the time the election is made and for all periods for which the election is to be effective.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, or (B) to acquire the shareholder consents, and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder of the corporation at any time during the period specified

pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation or a QSub, as the case may be during the period specified by the Secretary.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's election to treat Sub as a QSub on Date 2 was ineffective. We also conclude that the circumstances resulting in the effectiveness of the QSub election were inadvertent within the meaning of § 1362(f). Thus, under the provisions of § 1362(f), Sub will be treated as a QSub effective Date 2, through Date 3, provided that Sub's QSub election was otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether Sub was otherwise eligible to be treated as a QSub or on the validity of the reorganization under § 368(a)(1)(F) or its tax consequences.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, we are sending a copy of this letter to X's authorized representative.

Sincerely,

By: /s/ \_\_\_\_\_  
Joy C. Spies  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure (1):  
Copy of this letter for § 6110 purposes

cc: